

**LIABILITY FOR ILLEGAL TAMPERING
WITH A MOTOR VEHICLE ODOMETER
READING OR INTERFERENCE
INTO ITS PROPER MILEAGE MEASUREMENT
(ARTICLE 306A CC)**

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1. DEVELOPMENT OF LIABILITY FOR ILLEGAL TAMPERING
WITH THE READING ON A MOTOR VEHICLE ODOMETER

Article 306a CC was added to the Criminal Code by means of Article 2(2) of the Act of 15 March¹ and entered into force on 25 May 2019. Offences classified in Article 306a §§ 1 and 2 CC did not have an equivalent in the provisions of the former Criminal Code. The introduction of provisions penalising clocking (rolling back odometers or another practice of altering the reading on them) is one of the elements of the implementation of the provisions of Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC.² What is especially important from the point of view of the measure in question is the declaration in subsection 25 of the Preamble to the Directive, in accordance with which “Odometer fraud should be regarded as an offence liable to a penalty, because manipulation of an odometer may lead to an incorrect evaluation of the roadworthiness of a vehicle. The recording of mileage in the roadworthiness certi-

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¹ Act of 15 March 2019 amending the Act: Road Traffic Law and the Act: Criminal Code, Dz.U., item 870; Road Traffic Law and Criminal Code henceforth referred to RTL and CC, respectively.

² OJ L 127 of 2014, p. 51 et seq.

ificate and access for inspectors to that information should facilitate the detection of odometer tampering or manipulation.” Article 8 para. 6 Directive stipulates that in cases where it is found that an odometer has been manipulated with for the purpose of reducing or misrepresenting the mileage of a vehicle, such manipulation shall be punishable by effective, proportionate, dissuasive and non-discriminatory penalties.

The introduction of provisions penalising conduct consisting in illegal interference into an odometer of a motor vehicle required correlation with administrative regulations concerning technical tests aimed to verify a vehicle’s mileage. The content of the provisions of the Act of 15 March 2019 amending the Act: Road Traffic Law and the Act: Criminal Code indicates that the legislator decided to transpose the provisions of Directive 2014/45/EU to a large extent. Additional mechanisms unknown before were introduced, which made it possible to reveal the condition of an odometer (also of a vehicle not registered), or possibly, the fact of its replacement in the Central Vehicle Registry (Article 80a para. 2(3)(c), Article 80b para. 1(21)–(22) RTL) not only for roadworthiness test stations (Article 80ba para. 1(6) RTL) but also, which is a novelty, for bodies authorised to carry out roadside inspection, i.e. a competent organisational unit of the Police, the Border Guard, the Road Traffic Inspection, the Military Police or the Customs-Fiscal Service (Article 80ba para. 1(6a) RTL). In the course of roadside inspection, the services are authorised to check the reading on odometers of vehicles stopped, odometers of vehicles towed and odometers of vehicles transported on a trailer together with the unit of measurement, and drivers are obliged to enable the authorised bodies to perform those activities (Article 129 para. 2(4a), Article 129l paras 1 and 2 RTL). Formalisation of the replacement of an odometer was also intended to strengthen those solutions. It is admissible only in case an odometer does not measure mileage in a situation when it should do so or when it is necessary to replace an element of a vehicle to which the odometer is inextricably connected (Articles 81a and 81b RTL).

In practice, such a spectre of dispositions constitutes a complex solution making it possible to reveal cases of rolling back odometers or another practice of unauthorised altering the reading on them and penalisation of such conduct as offences. This solution should be undoubtedly approved of because the regulations should combat this formerly common, often within a formally organised business activity, practice of clocking, which is actually unacceptable from the social point of view. Such practices constitute a typical “goalmouth” for perpetrators of prohibited acts, e.g. under Article 286 § 1 CC.

2. OBJECT OF PROTECTION

Determining the object of protection of all types of the offence under Article 306a CC, it is necessary to take into account the change of the title of Chapter XXXVI, where Article 306a was placed, from “Offences against business transactions” into “Offences against business transactions and property interests in civil transactions”. It is rightly highlighted in literature that the amendment is systemic in nature and the current wording of the title of the Chapter fully reflects the nature of protected

legal interests, i.e. business transactions as a whole and property interests in civil transactions.³ This results in the fact that both the correctness of business transactions consisting in trading in second-hand vehicles and the property interests of the buyers of vehicles, which can be infringed by the fact of buying a vehicle with the mileage rolled back, i.e. a product with a fraudulently concealed feature, constitutes a direct object of protection. The provision also protects property interests of people obliged to pay the user of a vehicle consideration resulting from mileage, which has been mentioned above. And it does not matter whether the conduct took place within a business transaction between entrepreneurs or a civil transaction, i.e. one in which at least one party is not involved in business activities.⁴

The provision does not protect other legal interests. Both the Preamble and other provisions of Directive 2014/45/EU indicate that the elimination of worn-out vehicles with rolled back odometers that do not meet environmental requirements and do not ensure complete active and passive safety from transactions, thus also from road traffic, about which users most often do not know, has impact on road traffic safety. This circumstance does not mean, however, that this legal interest is currently recognised as a separate and autonomous legal interest connected with the growing role of road traffic in contemporary life and the necessity of emphasising the importance of this traffic safety,⁵ and is also protected by the provisions under Article 306a CC.

Offences are grouped in chapters based on the same or similar interests protected,⁶ and the type of object of protection is indicated in the title of a chapter where particular offences are placed. Moreover, the provisions of Chapter XXI CC together with the provision of Article 355 CC and the provisions of Chapter XI MC constitute the entire, complete and internally coherent regulation concerning penalisation of acts against the safety of road traffic. The norms are *lex specialis* in relation to other penal provisions.⁷

³ D. Szeleszczuk, *Kryminalizacja „cofania liczników” w świetle projektowanej nowelizacji Kodeksu karnego z 5 lipca 2018 r.*, Prokuratura i Prawo No. 1, 2019, p. 84.

⁴ *Ibid.*

⁵ A. Bachrach, *Przestępstwa i wykroczenia drogowe w nowym prawie polskim*, Warszawa 1974, p. 288; A. Gubiński, *Prawo wykroczeń*, Warszawa 1985, p. 292; Z. Szmidt, *Administracyjnoprawna działalność MO w ochronie bezpieczeństwa i porządku publicznego*, Warszawa 1981, p. 12; K. Rajchel, *Porządek i bezpieczeństwo w ruchu drogowym*, Rzeszów 1997, p. 15; R.A. Stefański, *Wykroczenia drogowe. Komentarz*, Warszawa 2012, p. 63; R. Hałas, [in:] A. Grześkowiak (ed.), K. Wiak (ed.), F. Ciepły, M. Gałazka, R. Hałas, S. Hypś, D. Szeleszczuk, *Kodeks karny. Komentarz*, Warszawa 2012, p. 813; T. Razowski, *Uwagi wprowadzające do rozdziału XXI k.k.*, [in:] J. Giezek (ed.), D. Gruszecka, N. Kłaczyńska, G. Łabuda, A. Muszyńska, T. Razowski, *Kodeks karny. Część szczegółowa. Komentarz*, LEX 2014.

⁶ R.A. Stefański, *supra* n. 4, p. 62.

⁷ K. Buchała, [in:] I. Andrejew, L. Kubicki, J. Waszczyński, *System prawa karnego*, Vol. IV, Part 1, Warszawa 1985, p. 268; *idem*, *Przestępstwa i wykroczenia przeciwko bezpieczeństwu w komunikacji drogowej*, Bydgoszcz 1997, pp. 132–133, 361; W. Maćior, *Problemy przestępstw nieumyślnych na tle aktualnych wymagań teorii i praktyki*, Zeszyty Naukowe Uniwersytetu Jagiellońskiego 1968, No. 35, p. 22; W. Radecki, *Zagrożenie bezpieczeństwa ruchu drogowego przez nietrzeźwych kierowców*, Nowe Prawo No. 10–11, 1975, p. 1305; *idem*, *Przestępstwa narażenia życia i zdrowia człowieka na niebezpieczeństwo w kodeksie karnym PRL z 1969 r.*, Wrocław 1977, p. 77; J. Kochanowski, *Zagadnienia przestępstw drogowych i przeciwko bezpieczeństwu w komunikacji*, Warszawa 1990, p. 43; the Supreme

3. OFFENCE TYPES

There are four types of the offence under Article 306a CC: two basic ones (Article 306a §§ 1 and 2) and two less serious ones⁸ (Article 306a § 3 CC), which results from their placement in a separate editorial unit of the provision and reference to the feature of “a case of lesser significance”, which carries a mitigated sanction in relation to basic types.⁹

Article 306a § 1 CC specifies the basic type of the offence, which is connected with two types of executive actions: alteration of the reading on a vehicle odometer or interference into the correctness of its measurement of mileage.

Article 306a § 2 CC specifies the second basic type of the offence, criminalising conduct which can be called quasi-incitement, consisting in commissioning the act under § 1.

The less serious types are specified in Article 306a § 3 CC as executive actions with features of basic types but a changed constituting feature of “a case of lesser significance”.¹⁰ It is not a concept unknown to the Criminal Code; however, it has not been determined by a legal definition so far. In case law, an offence that is less serious than the basic type, but characterised by a dominance of mitigating subjective-objective elements, is traditionally recognised as a case of lesser significance.¹¹ It concerns cases in which the level of social harmfulness and a perpetrator’s fault are lower than in the case of the basic type but they do not reach the level of insignificance. A case of lesser significance is halfway between the lack of material content of an offence and the state recognised as an offence of the basic type.¹² The case discussed constitutes an example of an indefinite less serious type. A more lenient sanction has not been normatively determined but it can depend on various features of an event to be assessed by a proceeding body. Thus, “an axiological factor” substitutes for the problem of the lack of the mitigating feature.¹³

Referring a relative approach of the above discussion to the features of acts specified in Article 306a §§ 1 and 2 CC, it is necessary to agree that a case of lesser significance may occur in circumstances that are subjective or objective in nature.

Court resolution of 15 February 1977, VII KZP 22/76, OSNKW 1977, No. 3, item 17; E. Szwedek, *Glosa do uchwały SN z dnia 25 lutego 1977 r.*, VII KZP 22/76, OSPiKA No. 1, 1978, pp. 25–27; A. Bachrach, *supra* n. 5, pp. 257–258; *idem*, *Reglamentacja prawna bezpieczeństwa ruchu drogowego*, Państwo i Prawo No. 5, 1972, p. 78; the Supreme Court judgment of 20 February 2008, V KK 313/07, KZS 2009, No. 11, item 13 with a gloss by A. Ważny, *Paragraf na Drodze* No. 10, 2009, pp. 5–11.

⁸ D. Szeleszczuk, *supra* n. 3, pp. 85–86.

⁹ W. Wolter, *Uprzywilejowane typy przestępstw*, Państwo i Prawo No. 1–2, 1976, p. 110; T. Bojarski, *Odmiany podstawowych typów przestępstw w prawie polskim*, Warszawa 1982, p. 142; B.J. Stefańska, *Wypadek mniejszej wagi w polskim prawie karnym*, *Ius Novum* No. 1, 2017, pp. 49–51.

¹⁰ I. Andrejew, *Podstawowe pojęcia nauki o przestępstwie*, Warszawa 1988, p. 214.

¹¹ The Supreme Court judgment of 9 October 1996, V KKN 79/96, OSNKW 1997, No. 3–4, item 27; the Supreme Court resolution of 22 December 1978, VII KZP 23/77, OSNKW 1979, No. 1–2, item 1; the Supreme Court resolution of 15 July 1971, VI KZP 42/70, OSNKW 1971, No. 11 item 163.

¹² Judgment of the Court of Appeal in Kraków of 5 June 2002, II AKa 128/02, KZS 2002, No. 6, item 16.

¹³ W. Wolter, *supra* n. 9, p. 110.

In the former group, the conduct that gives grounds for more lenient treatment of a perpetrator (in both aspects of perpetration and “commissioning”) can consist in:

- a slight modification of mileage, e.g. not exceeding 10% of the real measurement;
- an alteration exceeding the limits of common sense, especially in the context of the age and former use of the vehicle, e.g. rolling back the odometer of a ten-year old vehicle used as a taxi to the figure of 100,000 km;
- a change of the odometer reading regardless of the actual state registered in the publicly available records of the Central Vehicle Registry or in the documents of the vehicle itself, e.g. certificates of servicing or periodical roadworthiness tests;
- unsuccessful modification that enables even an inexperienced person to detect it “at first glance”, e.g. because there are well seen signs of tampering with the reading on the odometer.

As far as the subjective aspect is concerned, a case of lesser significance may consist in the conduct that is not connected with organised business activities, is occasional, and is not motivated by the intention to sell a vehicle or perform other activities connected with the proper functioning of an odometer, thus not intended to deceive anybody about the actual mileage travelled.

4. OBJECTIVE ASPECT

An executive action under Article 306a § 1 CC incorporates: (a) altering the reading on a motor vehicle odometer or (b) interference into its proper measurement of mileage. The conjunction “or” expresses a joint alternative, i.e. it admits a possibility of co-occurrence of situations communicated by the two parts of the sentence joined by this conjunction. It is due to the fact that interference into the proper measurement of mileage by an odometer results in altering of the reading on it.

Only activities aimed at falsifying the reading on an odometer, i.e. leading to a situation in which the reading on an odometer is not the same as the actual mileage, are subject to penalisation. There is a doubt whether it results only from action, i.e. active conduct, or whether the offence in question can be committed by means of omission in particular consisting in intentionally driving a vehicle with a defective odometer, which, as a result of a mechanical or electronic defect, stopped measuring mileage (stopped working) at all or stopped measuring mileage properly. It seems that conscious acceptance of this state of things and using a vehicle (increasing mileage) knowing that an odometer does not register it, from the point of view of the consequence of an offence, does not differ from other methods of illegal altering of the reading on an odometer, possibly only with the exception of the duration of the process concerned. Thus, it seems that the conduct matches the feature laid down in Article 306a § 1 *in principio* CC. However, what needs consideration is the legal approach to this liability if, in accordance with Article 2 CC, only a person who has a legal obligation to prevent an effect is criminally liable for a consecutive offence committed by means of omission. Thus, criminal liability would depend on the position of an owner or a user of a motor vehicle as a guarantor of non-occurrence of an effect, which would be the altering of the reading on an odometer

in comparison with the actual mileage. On the one hand, the source of the legal obligation in this area can be found in the content of Article 66 para. 2 RTL, in accordance with which devices and equipment of a vehicle should be maintained in proper state and function properly and efficiently. The disposition of this provision is precisely determined, inter alia, in § 11(1.4) of the Regulation of the Minister of Infrastructure of 31 December 2002 on technical conditions of motor vehicles and the scope of their necessary equipment,¹⁴ in accordance with which a motor vehicle is in particular equipped with an odometer. The fulfilment of the obligation to have a properly working odometer is subject to regular supervision within the periodical vehicle roadworthiness inspection, however, as it has been mentioned above, evident features of tampering with an odometer (fraud) or recognition that it does not work can be treated as a serious defect, i.e. a defect that can infringe the safety of road traffic and environment protection (§ 2(4.2) Regulation of the Minister of Transport, Construction and Maritime Economy of 26 June 2012 on the scope and method of carrying out vehicle roadworthiness inspection and specimen documents used for this purpose¹⁵). The above reasons are for the assumption that a motor vehicle user, as a rule, is obliged to drive a vehicle equipped, inter alia, with a properly working odometer. In such a situation, the use of the phrase “the replacement of an odometer is admissible” in Article 81a RTL should be interpreted as an obligation. In such a situation, and, as an additional argument, in the face of the introduction of the formalised procedure of checking the reading on an odometer also during the standard roadside inspection, it is hard to assume that an owner or a user of a vehicle is not obliged to ensure proper functioning of an odometer, thus is not responsible for its proper measurement of mileage. Also the purpose-related interpretation of mutually connected provisions of Article 81a and Article 81b RTL support this stand. This is because if it was assumed that the latest provision, under the threat of punishment for a misdemeanour under Article 97 Misdemeanour Code (henceforth MC), imposes an obligation to provide a newly replaced and properly working odometer suitable for a particular type of vehicle in the roadworthiness inspection station for the purpose of checking the reading, the disposition of this provision in relation to persons who did not decide to take those steps, accepting driving with a defective odometer, would constitute an empty norm. Such interpretation seems to negate the essence of the new regulations the role of which is to eliminate all and not selectively chosen cases of clocking.

That is why, it is difficult to *a priori* abandon the assumption of a possibility of committing an act under Article 306a § 1 CC by means of omission to meet the requirement of driving a roadworthy vehicle, including one with a properly working odometer, and this way causing illegal alteration of the reading on an odometer. Therefore, one must disagree with the opinion that it concerns only the conduct consisting in physical, real interference into the reading on an odometer.¹⁶

¹⁴ Consolidated text, Dz.U. 2016, item 2022, as amended.

¹⁵ Consolidated text, Dz.U. 2015, item 776, as amended.

¹⁶ D. Szeleszczuk, *supra* n. 3, p. 86.

Both the replacement of a motor vehicle odometer and the interference into its proper measurement of mileage are consecutive in nature. In the former case, a perpetrator's action results in obtaining a state in which an odometer shows mileage that differs from the actual one. In the latter case, the result is a state in which an odometer tampered with stops working properly and playing its designed function both because it stops measuring mileage at all or because it measures mileage that is different from the real one, higher or lower than the actual one.

4.1. ALTERING THE READING ON AN ODOMETER

An odometer is an instrument measuring and designed to register the distance travelled by a vehicle in units of measurement such as kilometres or miles. As far as the mile is concerned, it is an international mile that is a non-metric (imperial) unit of distance used in the Anglo-Saxon countries¹⁷ equivalent to ca. 1,609 km. The main role of an odometer is to make it possible to assess the roadworthiness of a vehicle, which decreases, inter alia, proportionally to the mileage. As a result, it is essential for safe participation in road traffic and the fulfilment of environmental requirements.

The provisions of Regulation on technical conditions of vehicles and the scope of their necessary equipment stipulate that only a motor vehicle must have an odometer (§ 11(1.4)). An odometer is not a piece of obligatory equipment of a tractor, a slow-movement vehicle, a moped or a rail vehicle (*argumentum ex Article 2 paras 32–34, 44, 46 RTL and § 46 in conjunction with § 44 Regulation of technical conditions of vehicles and the scope of their necessary equipment*).

The features defined in Article 306a § 1 CC indicate that its objective scope covers not only motor vehicles that must be equipped with an odometer. It is applicable to every motor vehicle with an odometer installed, regardless of whether it resulted from its design and construction or it is an additional instrument installed by the owner of a vehicle of their free will. Thus, it is necessary to agree with an opinion that the statutory features of an offence under Article 306a CC are matched when an executive action is undertaken against a motor vehicle which is not a standard road vehicle if it is equipped with an optional odometer.¹⁸

Altering the reading on an odometer concerns every activity consisting in the introduction of changes into the indications of the mileage travelled. In the case of contemporary vehicles with electronic systems implementing the OBDII (On-Board Diagnostic level 2)¹⁹ standard, the change of the odometer reading can be perfor-

¹⁷ Inter alia in the United States, the United Kingdom, Canada, Australia, New Zealand and the Republic of South Africa.

¹⁸ D. Szeleszczuk, *supra* n. 3, p. 92; M. Kulik, [in:] M. Mozgawa (ed.), M. Budyn-Kulik, P. Kozłowska-Kalisz, *Kodeks karny. Komentarz*, Warszawa 2019, commentary on Article 306a CC, thesis 7.

¹⁹ The electronic system giving access to the data concerning particular mechanisms of a vehicle constitutes obligatory equipment in vehicles sold in the US after 1 January 1996, in the European Union after 1 January 2001 and in Poland after 1 January 2002, and in those with a diesel engine sold in the European Union after 1 January 2003. Cars equipped with the OBDII system have a characteristic 16-pin diagnostic connection making it possible to use a computer

med with the use of a PC connected to a vehicle diagnostic device with a special interface.²⁰ At present, companies developing software to modify the reading on an odometer create their own devices with an integrated interface and a simplified computer. These instruments are designed to be used in different brands of cars, even the latest models,²¹ and often offer additional functions, e.g. of programming additional keys.²² The products are often counterfeit and one device with the same parameters can be produced under different brand names, which makes identification of the original producer impossible. However, this is not a problem for those who are interested in the purchase and use of the device. Instructions of use are available on the websites as well as dedicated motorists' forums. Retailers often state that they provide full after-sale assistance.

Due to the above-mentioned unlimited possibilities of interference into the computer record of mileage, just tampering with the liquid-crystal display of an odometer is of lesser significance.²³

Illegal altering of the reading on an odometer can often take the form of mechanical interference. However, such a method of a perpetrator's action can only involve older vehicles, which are not equipped with electronic systems of recording mileage. The executive action consists in the connection of a clock with a meter to a small engine imitating a vehicle movement. A perpetrator intends to lead to a situation in which an odometer exceeds the reading of 999,999 km (in some older vehicles 99,999 km) and is turned to "zero" reading, and next waits to reach the desired figure. Another method consists in the disassembling of rolls with digits and reassembling them in a different way.²⁴ The method can be applied in antique or collector's cars. Their value rises dramatically in proportion to their low mileage. There is also a different opinion presented in literature, according to which the change of the reading on an odometer or interference in its proper measurement in historic vehicles is not illegal. It is argued that the specificity of those vehicles as well as their exploitation and the maintenance of their life and functionality require interference in mechanisms responsible for driving and its safety.²⁵ This stance is not understandable in the context of illegal altering of the reading on an odometer,

diagnostic program; see S. Wierzbicki, *Procedury diagnozowania pojazdów samochodowych zgodnych z normą OBD II*, Diagnostyka Vol. 28, 2003, pp. 47–52; Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC, OJ L 350, 28/12/1998, pp. 1–57.

²⁰ For instance, the program VAG K+CAN K Can Commander 1.4 serving, inter alia, to alter odometers in older models of vehicles within the group of Volkswagen AG together with an appropriate interface (cable) is offered in Polish and Chinese online shops at the price that does not often exceed \$10.

²¹ For instance, the device called Super DSP III DSP3 Odometer Correction Tool is, according to the producer's declaration, designed for the vehicles of the following brands: Audi, VW, Skoda, Seat, Bentley, Mercedes, Land Rover, Jaguar, Volvo and Porsche, and serves models of 2010–2017. The price of the device on dhgate.com is \$455.

²² For instance, the device called OBDSTAR X100 PROS Auto Key Programmer; the price of the device on aliexpress.com is \$245.

²³ *Ibid.*

²⁴ D. Szeleszczuk, *supra* n. 3, pp. 86–87.

²⁵ *Ibid.*, p. 92; M. Kulik, *supra* n. 18, commentary on Article 306a CC, thesis 7.

which is not the type of conduct that affects driving or the safety of traffic. It is erroneously assumed that in case of those vehicles, their mileage has little or no impact on their market value at all.²⁶ Obviously, this is not the only criterion that a buyer of such a vehicle takes into account. However, it should be noticed that old car lovers often look for and pay more for vehicles that have not been driven at all (called “young-timers”) and it is not important whether they meet the criteria for an “antique vehicle” referred to in Article 2 para. 39 RTL. Moreover, an antique vehicle is subject to roadworthiness inspection before its registration in the Republic of Poland (Article 81 para. 11a RTL). Thus, there are no reasons for excluding whatever motor vehicle equipped with an odometer from the scope of conduct referred to in Article 306a § 1 or § 2.

Liability under Article 306a § 1 CC for conduct that consists in the replacement of an odometer in a situation when a newly installed odometer shows the reading appropriate for the vehicle from which it was taken and not the one in which it was installed raises doubts. There were arguments referring to the grammatical interpretation of the provision and stating that such conduct does not result in the change of the reading on an odometer itself.²⁷ On the other hand, as it seems, it was not accidentally raised in the legislative motives that it is possible to adjudicate the forfeiture of items not only used for unauthorised interference into the reading on an odometer but also for its unsubstantiated replacement.²⁸ Thus, if the legislator admits the adjudication of the forfeiture of such items as those that served to commit an offence, it is clear that an unsubstantiated replacement of an odometer is such.

In fact, the problem is more complicated in the light of both the object of protection, *ratio legis* of the complex of normative regulations obliging, inter alia, to report the fact of the replacement of an odometer and record its current reading in order to recognise the real mileage of a vehicle, and the basic rules of criminal liability.

On the one hand, the legislator intended to eliminate a fraudulent concealment of a vehicle feature, i.e. its real mileage, and not only the interference into an odometer. When a perpetrator installs another odometer (with a lower mileage figure) in a vehicle in circumstances different from those laid down in Article 81a RTL or does not meet the requirements laid down in Article 81b RTL, as it is explained in the motives for the amendment bill, the legislator seems to not exclude the matching of the features of a misdemeanour under Article 97 MC as well as an offence under Article 306a § 1 CC.²⁹ It was also raised in literature that the obligation to present a vehicle at a roadworthiness inspection station for the purpose of checking the reading on a newly replaced odometer (Article 81b para. 1 RTL) aims to eliminate fraud connected with a vehicle mileage committed in a basic form, i.e. by means of altering the reading on an original odometer (e.g. by rolling back the reading by a desired amount, ceasing its work or slowing down the measurement), via

²⁶ D. Szeleszczuk, *supra* n. 3, p. 92.

²⁷ M. Kulik, *supra* n. 18, commentary on Article 306a CC, thesis 3.

²⁸ Justification for the government bill amending the Road Traffic Law and the Criminal Code [Uzasadnienie rządowego projektu ustawy o zmianie ustawy – Prawo o ruchu drogowym oraz ustawy – Kodeks karny], Sejm print No. 2878, p. 5.

²⁹ *Ibid.*, p. 7.

installing another odometer with a smaller reading in a vehicle under the pretence of repairing a defect in the original odometer.³⁰

It might seem that liability under Article 97 MC is limited to the failure to fulfil the above-mentioned obligation and not all the consequences of the replacement of an odometer into one that does not show the real mileage. Purely theoretically, in particular in relation to popular vehicle brands, one can imagine the development of the market of second-hand indicators with an integrated odometer, with a defined in general smaller mileage as an alternative to the currently criminalised procedure of rolling back odometers. From the point of view of property interests of e.g. a buyer of a motor vehicle, it is hard to agree that a person installing such an odometer in order to conceal the real mileage will be liable only for a misdemeanour, while the action in fact has the same results as the act criminalised in the provision of Article 306a § 1 CC. If we use the mileage of a vehicle to which a new odometer not showing the actual mileage was installed as the point of reference, without the fulfilment of the conditions under Article 81a RTL and the requirements under Article 81b RTL, the effect of a perpetrator's action is the same as the alteration of the reading on an odometer installed formerly and, as a result, creates a possibility of evoking another person's false conviction that the reading is real, thus endangering that person's property interests.

On the other hand, such interpretation seems to negate the basic principle of definiteness of criminal law provisions (*nullum crimen sine lege scripta* and *nullum crimen sine lege certa*) guaranteed not only in the Constitution and the Criminal Code but also in international legal acts (Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms,³¹ Article 15 of the International Covenant on Civil and Political Rights³²). It prescribes the application of an analogy and broadened interpretation in criminal law to a perpetrator's disadvantage.³³ It is rightly emphasised in the Supreme Court case law that criminal law plays the role of prevention, on the one hand, and is to protect an individual against interference into their rights by the authorities under the pretence of performing the protective function (a guarantee function), on the other hand. The basic instrument of fulfilling the guarantee function is the principle of definiteness of an act prohibited by statute.³⁴

The arguments deserve full approval and do not allow for broadening approach to the features under Article 306a §§ 1 and 2 CC, regardless of the legislator's objectives. Thus, the replacement of an odometer of a motor vehicle that violates the statutory provisions in order to conceal the actual mileage of a vehicle should be criminalised separately. However, it was not done. Thus, the legislative assumptions in this area have not been fully implemented.

³⁰ D. Szeleszczuk, *supra* n. 3, p. 88.

³¹ Dz.U. 1993, No. 61, item 284, as amended.

³² Dz.U. 1977, No. 38, item 167.

³³ The Supreme Court judgment of 4 April 2000, II KKN 335/99, LEX No. 50896.

³⁴ The Supreme Court ruling of 29 January 2009, I KZP 29/08, OSNKW 2009, No. 2, item 15.

4.2. INTERFERENCE INTO PROPER MEASUREMENT OF MILEAGE ON AN ODOMETER

Every type of conduct disrupting the proper measurement of mileage constitutes the interference into the proper measurement of an odometer. The concept should be analysed considering the legislator's intention interpreted as broadly as possible. It does not only take into account the disruption of the proper functioning of an odometer. What is essential is not the interference into an odometer alone but into its proper measurement. Proper measurement means showing the number of kilometres or miles actually travelled. Thus, this is a feature of actual mileage. The provision of Article 306a CC, as it has been mentioned above, is intended to protect, *inter alia*, motor vehicle buyers' property interests, which can be infringed by the fact of purchasing a vehicle with the mileage reading rolled back, and not by a defective odometer that was illegally tampered with.

In such a case, an executive action consists in the use of various types of instruments that permanently or temporarily obstruct, slow down or accelerate the functioning of an odometer. It can consist in the disconnection of an odometer from a vehicle driveline or electronic interference. As far as the latter is concerned, the opportunities are unlimited. Thus, it is possible to program a driver or a group of drivers responsible for measurement or modification of parameters of their work, falsifying the indications on an odometer in relation to the actual mileage.

Interference into the proper measurement does not have to be targeted at the elements of an odometer alone. Falsifying the speed, thus also the reading on an odometer, takes place in case of installing wheels of a diameter that is different from the one designed and approved in the vehicle roadworthiness certification (vehicle homologation), providing of course that this was a perpetrator's intention. For example,³⁵ the change of wheels designed by the producer that are 205 (a tyre width)/55, a tyre profile calculated as a percentage of its width) in size on 16-inch diameter wheel rims into tyres that are 20 mm narrower (i.e. 185/55/R16) will result in a decrease in the measurement of speed, thus as a result also mileage because this value is calculated based on speed. The difference between the diameters of the wheels compared is 22 mm (-3.61%). It is a seemingly insignificant figure, however, the speedometer of a vehicle actually driving at a speed of 100 km/h will show the speed of 96.4 km/h. At the same time, an odometer will show the distance of 100 km travelled as shorter by 4 km. By analogy, an odometer of a vehicle that travelled 500,000 km (the mileage is nothing extraordinary in case of the company cars) will show the reading of 480,000 km, i.e. a figure reduced by 20,000 km.

For obvious reasons, apart from the scope of criminalisation there is interference resulting from the essence of the measurement, thus, consisting in standard movement of a vehicle, which increases the mileage.

The use of the portmanteau "odometer" as the name of the object of the executive action means that it refers only to an instrument for measuring the distance

³⁵ Kalkulator zamienników kół, <https://www.oponeo.pl/narzedzia/zamienniki-opon#replacementsCalculator> (accessed 12.11.2019).

(path) travelled. Penalisation of unlawful tampering with an instrument for measuring the time of work of an engine used, inter alia, in slow-movement vehicles, lift trucks and tractors is excluded. This instrument is a clock for measuring time (called motor-hours) and not distance (path). It does not matter that in such vehicles this instrument, not an odometer measuring mileage, is of major importance for the assessment of their technical condition.³⁶

In relation to an offence specified in Article 306a § 2 CC, it is possible to commission another person to perform any of the above-mentioned activities, which is described in the section discussing the types of the offence.

The editorial form of this provision is disapproved of because it is considered that the specification of the causative feature disturbs the terminological cohesion of the Criminal Code.³⁷ It also decomposes the internal system of this code. It is rightly raised that it is hard to imagine that the commissioning of a prohibited act under Article 306a § 1 CC might, in any aspect, go beyond the framework of inducing a person to commit an offence (Article 18 § 2 CC), which carries a penalty within the limits prescribed for instigating, aiding and abetting (Article 19 § 1 CC).³⁸ The legislator assessed the issue differently. It was indicated in the justification for the amendment bill that instigating does not match all factual states that can take place in cases connected with interference into the reading on an odometer. In order to establish that instigating occurred, two conditions must be fulfilled: an instigator's direct intent (he/she wants another person to commit a prohibited act) and inducing a person to commit an offence. In such a configuration, the provision of Article 18 § 2 CC does not apply to a situation when an owner or a user of a vehicle only accepts a direct perpetrator's proposal to falsify the reading on an odometer, i.e. accepts an offer but does not induce a direct perpetrator to do this in any way. In such a case, the act of commissioning is not punished and an owner or a user of a vehicle is not criminally liable for their conduct, although they have consciously accepted unlawful interference into the reading on the odometer of their vehicle.³⁹

These arguments are not convincing. "To commission" means "to impose an obligation on somebody to do something, to formally ask someone to do something for you, to order".⁴⁰ The term "commission" is a noun and a verb. It means: "to request someone to do something"⁴¹ and "a demand, an order, a request"⁴². Therefore, the essence of commission consists in the activity of a person commissioning something and not in passive acceptance of someone's proposal. Thus, it refers to an action consisting in commissioning a task to perform, which results in the alteration of the reading on an odometer or disruption of its proper measurement. Therefore, a situation described by the legislator in which a proposal of altering the reading on

³⁶ Justification, *supra* n. 28, p. 3.

³⁷ M. Kulik, *supra* n. 18, commentary on Article 306a CC, thesis 8.

³⁸ *Ibid.*

³⁹ Justification, *supra* n. 28, p. 4.

⁴⁰ S. Dubisz (ed.), *Uniwersalny słownik języka polskiego*, Warszawa 2006, Vol. T-Ż, p. 1009; W. Doroszewski (ed.), *Słownik języka polskiego*, Warszawa 1958-1969, <https://sjp.pwn.pl> (accessed 11.11.2019).

⁴¹ S. Dubisz (ed.), *supra* n. 40, p.1009.

⁴² W. Doroszewski (ed.), *supra* n. 40 (accessed 11.11.2019).

an odometer is accepted can be analysed in terms of co-perpetration of an act under Article 306a § 1 CC but never as “commissioning with oblique intent”.

“Commissioning” another person to commit an act under Article 306a § 1 CC should be recognised as one of the forms of instigation, in a way excluded from other forms of this non-causative offence carrying the same penalty as a causative form. It is hard to assume that this way the legislator excluded liability for “classic” instigation to commit a prohibited act under Article 306a § 1 CC, which is in a form different from commissioning to commit acts referred to therein. Thus, instigation to commit an offence under this provision can take any form of inciting with a direct intent but with the exception of commissioning. Therefore, it can be a proposal, encouragement, a suggestion, advice, a request, commission, an order or a threat,⁴³ sometimes in cumulative concurrence with other provisions of the statute.

A normative approach to Article 306a § 2 CC can raise practical interpretational doubts connected with non-causative forms of an offence commission and legal classification of such conduct, e.g. whether the head of a garage offering a “service” of illegal alteration of the reading on an odometer, ordering an employee to perform this act shall be liable for managerial instigation to commit an offence under Article 306a § 1 CC or an aggravated offence under Article 306a § 2 CC.

It is necessary to recognise liability of a perpetrator not only commissioning a direct perpetrator to alter the reading on an odometer but also commissioning an unknown one through an intermediary. It concerns requesting another person to incite a particular third person to commit an act under Article 306a § 1 CC. This is a situation analogous to “instigation to instigation”, which is in general recognised as punishable in the doctrine and case law.⁴⁴

If it is assumed that commissioning an activity is a specific form of instigation, and it should be recognised that it is causative in nature.⁴⁵ What it actually causes is evoking a perpetrator’s intention (will, decision) to commit a prohibited act. However, it is not necessary for the person instigated to undertake whatever steps to fulfil the intention.⁴⁶

⁴³ V. Konarska-Wrzosek, [in:] V. Konarska-Wrzosek (ed.), A. Lach, J. Lachowski, T. Oczkowski, I. Zgoliński, A. Ziółkowska, *Kodeks karny*, Warszawa 2019, commentary on Article 18 CC, thesis 15.

⁴⁴ G. Rejman, [in:] G. Rejman (ed.), E. Bieńkowska, B. Kunicka-Michalska, J. Wojciechowska, *Kodeks karny. Część ogólna. Komentarz*, Warszawa 1999, p. 627; A. Wasek, *Kodeks karny. Komentarz*, Vol. I, Gdańsk 1999, p. 262; L. Gardocki, *Prawo karne*, Warszawa 2008, p. 99; J. Giezek, [in:] J. Giezek, N. Kłaczyńska, G. Łabuda, *Kodeks karny. Komentarz*, Warszawa 2012, pp. 167–168; P. Kardas, [in:] A. Zoll (ed.), *Kodeks karny. Część ogólna*, Vol. 1, *Komentarz do art. 1–116*, Warszawa 2012, pp. 361–362; B.J. Stefańska, [in:] R.A. Stefański (ed.), *Kodeks karny. Komentarz*, Warszawa 2015, pp. 218–219; the Supreme Court judgment of 3 December 1964, VI KO 36/62, OSPiKA 1966, No. 10, item 12; the Supreme Court resolution of 21 October 2003, I KZP 11/03, OSNKW 2003, No. 11–12, item 89; the Constitutional Tribunal judgment of 17 July 2014, SK 35/12; judgment of the Court of Appeal in Warsaw of 31 March 2017, II AKa 450/16, LEX No. 2295317.

⁴⁵ Differently and inaccurately A. Zoll, [in:] K. Buchała, A. Zoll, *Kodeks karny. Komentarz*, Kraków 1998, p. 183; the Supreme Court judgment of 2 October 2002, IV KKN 109/00, Prokuratura i Prawo – supplement 2003, No. 3, item 2.

⁴⁶ V. Konarska-Wrzosek, *supra* n. 43, commentary on Article 18 CC, thesis 16; J. Giezek, [in:] J. Giezek (ed.), *supra* n. 44, pp. 164 and 166; P. Kardas, *supra* n. 44, p. 347; B.J. Stefańska, *supra* n. 44, p. 218; the Supreme Court judgments of 28 November 2006, III KK 156/06 and of 20 September 2007, III KK 149/07, LEX No. 420451.

Another issue that seems to be a problem is whether the provisions of Articles 22–23 CC are applicable to a person commissioning the prohibited act in question, especially if extraordinary mitigation of penalty or renunciation of the imposition of a penalty can be taken into account, which in cases determined in those provisions can be applicable to an instigator. A separate regulation of “commissioning” to commit an offence constitutes a special provision in relation to the provisions on instigation, and thus, as *lex specialis*, it excludes their application with respect to general provisions determining the rules of criminal liability, also including those mitigating an instigator’s liability or even guaranteeing his/her impunity.⁴⁷

5. SUBJECT

All types of the offence are common in nature (*delictum commune*). The legislator determined additional restrictions narrowing the circle of perpetrators of the offence under Article 306a CC or specifying special features of a subject. In practice, perpetrators of an act laid down in Article 306a § 1 CC are persons who alter the reading on an odometer within their organised, although not necessarily formalised, business activity. In the era of common and popular trade between Poland and China, especially via the platform aliexpress.com, instruments for altering the reading on an odometer of practically any modern car are available to anyone and not only those knowledgeable persons offering specialised services. This means that the circle of potential perpetrators of the discussed offence can be very broad. On the one hand, it is indicated by the rate of sales of those instruments and comments of Polish buyers that they place on motorists’ forums to express their satisfaction with the effects obtained. On the other hand, lively discussions between the lovers of particular car brands on those forums provide instructions in the use of those devices and programs. Due to a moderate difficulty connected with the alteration of the reading on an odometer or interference into its proper measurement, it cannot be excluded that vehicle owners or users interested in the change of the reading will be perpetrators of that offence because, e.g. they may want to do this before selling their vehicle or returning a leased car (in case the lease contract determines the maximum mileage), or persons, as it has been stated earlier, whose income or other benefits, e.g. in the form of fuel cost refund, depend on mileage (company reps, persons involved in the transport of people and goods). It does not matter whether a perpetrator commits a criminalised act on their own or somebody else’s behalf. It does not matter what the legal form of the business activity or the qualifications of the subject are.

A perpetrator of commissioning another person to alter the reading on an odometer or to interfere into its proper functioning (Article 306a § 2 CC) is a person on whose initiative the illegal clocking is to be committed. Most often, it will be the owner or user of a motor vehicle but it may be another person who is involved in selling, renting or importing second-hand cars.

⁴⁷ B.J. Stefańska, *Zagrożenie karne za podżeganie i pomocnictwo*, Prokuratura i Prawo No. 12, 2017, pp. 28–35.

6. SUBJECTIVE ASPECT

Both types of this offence, the basic one and the one of lesser significance, can only be committed intentionally.

Altering the reading on an odometer as well as illegal interference into its proper measurement can be committed with direct intent. A perpetrator wants to falsify the actual mileage and undertakes causative actions targeted at this conduct.

In relation to punishable interference into the proper measurement of an odometer (Article 306a § 1 *in fine* CC), it is not excluded that the offence can be also committed with oblique intent. This opinion is approved of in literature.⁴⁸ This intent also usually accompanies another, often non-criminal, desire of a man.⁴⁹ Thus, a perpetrator takes into account a possibility of committing this offence (gives consent to this), however, it does not constitute a major motive of his action. The requirement for liability is the establishment of real awareness of the possibility of matching the features of a prohibited act (predicting and accepting them). It is not sufficient to just imagine what the conduct may result in.⁵⁰

The impulse can be, e.g. a desire to make some changes that, in the owner's opinion, are to update or modify a vehicle (called car tuning). For example, installing low-profile tyres that are different from the size approved in the homologation, a perpetrator may be aware that the modification will influence the measurement of mileage on an odometer; however, his direct aim is to change the visual image of his vehicle.

An act consisting in commissioning an activity referred to in Article 306a § 1 CC (Article 306a § 2 CC) can be committed only with a direct intent. If, as it has been mentioned, the initiative of a person commissioning something is the essence of the commissioning, it is hard to imagine that it can take a form of passive acceptance of an offer. The example provided in the legislative motives, according to which an owner or a user of a vehicle only accepts a proposal of a direct perpetrator of the falsification of the reading on an odometer, however, in no way inducing the direct perpetrator to its implementation, which was to match the features of commissioning with an oblique intent, is – as it has been indicated above – erroneous because such conduct does not match the feature of “commissioning” and, thus, only the perpetration of an act under Article 306a § 1 CC in an adequate factual form can be considered.

7. CONCURRENCE OF PROVISIONS

Tampering with the reading on an odometer of a motor vehicle or interference into its proper measurement in general constitutes the first stage of an offence of fraud, however, it is the mileage that is an object of deception or taking advantage of misin-

⁴⁸ D. Szeleszczuk, *supra* n. 3, p. 93.

⁴⁹ Judgment of the Court of Appeal in Lublin of 11 July 2002, II AKa 143/02, OSA 2003, No. 4, item 29.

⁵⁰ Judgment of the Court of Appeal in Katowice of 13 January 2011, II AKa 451/10, LEX No. 785464; judgment of the Court of Appeal in Lublin of 8 December 2008, II AKa 287/08, KZS 2009, No. 2, item 44.

terpretation. What is criminalised is the “goalmouth” of the infringement of a legal interest, which is similar in nature, regardless of the placement of Article 286 CC and Article 306a CC in separate chapters of the Criminal Code. Thus, we deal with what is called simplified criminalisation, the essence of which is to cover some types of substitute conduct hidden behind the criminalised one instead of those that are difficult to prove or in order to prevent acts that are of considerable social harmfulness.⁵¹ Penalisation of conduct specified in Article 306a CC results from practical difficulties in proving the features of fraud consisting in, e.g. selling a motor vehicle with intentionally decreased, in relation to the actual, reading on an odometer and making a buyer dispose of their or someone else’s property in a disadvantageous way by overpricing the vehicle. While the practice of altering the reading on an odometer in order to increase attractiveness of a vehicle for a potential buyer is obvious,⁵² the consequence of causative actions referred to in Article 306a CC may also consist in the increase of mileage, especially in case of a company car in order to indicate bigger mileage and obtain profits (reps get bonuses and a refund of expenses incurred for the purchase of fuel, which in fact has not been bought, etc.). However, the normative content of the provision of Article 286 § 1 CC does not cover the conduct determined in Article 306a CC and does not reflect the whole burden of social harmfulness of an act. It also cannot be assumed that the infringement of another provision, in this case Article 306a §§ 1–3, is taken into account in the commission of an aggravated act under an incorporating provision (Article 286 § 1 CC).⁵³ Thus, in spite of the fact that falsification of the reading on an odometer in general constitutes a means of committing the offence of fraud, it is rightly concluded that there is no *lex consumens derogat legi consumptae* relation between those provisions.⁵⁴ As Article 306a CC is not incorporated by Article 286 § 1 CC, its infringement should be taken into account in the legal classification of the above-discussed conduct.

Thus, all types of acts determined in Article 306a CC can be in cumulative concurrence (Article 11 § 2 CC) with the provision of Article 286 § 1 CC, and in the case of vehicles of high value, the classification should also take into account Article 294 § 1 CC.

8. PENAL CONSEQUENCES

Both basic types (Article 306a § 1 and § 2 CC) carry a penalty of deprivation of liberty for a term from three months to five years. Such penalty is prescribed in § 1 of the provision and in § 2 there is a phrase “The same penalty is applied to”, which refers to the offence classified in § 1.

⁵¹ L. Gardocki, *Zagadnienia teorii kryminalizacji*, Warszawa 1990, p. 67; *idem*, *Typizacja uproszczona*, *Studia Iuridica* No. 10, 1982, p. 75; *idem*, *Uproszczone formy penalizacji*, *Państwo i Prawo* No. 8–9, 1975, p. 75.

⁵² Justification, *supra* n. 28, pp. 1–3; D. Szeleszczuk, *supra* n. 3, pp. 82–83.

⁵³ W. Wolter, *Nauka o przestępstwie*, Warszawa 1973, p. 336.

⁵⁴ D. Szeleszczuk, *supra* n. 3, p. 93; M. Kulik, *supra* n. 18, commentary on Article 306a CC, thesis 12.

The types carrying mitigated penalty in cases of lesser significance carry alternative penalties: a fine, limitation of liberty or deprivation of liberty for up to two years.

Defining of a penal sanction for an act under Article 306a CC should be recognised as adequate to the level of social harmfulness of the conduct, although there is also an opposite opinion presented in literature.⁵⁵ It was right to recognise the penalty for an offence of falsifying a document (Article 270 § 1 CC) as a starting point to determine sanctions in the justification for the bill. An odometer is not only an instrument recording mileage but also for doing this in a special form targeting user-friendly, unambiguous reading, which is available to everybody.

The sanction for an offence under Article 306a § 2 CC is also adequate. Regardless of the doubts presented above, it should be consistently assumed that commissioning as a special form of instigation should, in accordance with the general clause, carry a penalty within the scope prescribed for perpetration. The prescribed penalty is also adequate to the penalty for the offence of forging or counterfeiting, or altering documents in cases of lesser significance (Article 270 § 2a CC).

A statutory penalty of deprivation of liberty (from three months to five years) for basic types of the offence as well as defining the types carrying a mitigated penalty (Article 306a § 3 CC), which is a fine, limitation of liberty or deprivation of liberty up to two years, give a court the possibility of taking a flexible normative choice of adequate and just penalty comprehensively considering subjective-objective circumstances without unsubstantiated limitations (Article 53 CC).

Penal sanctions can also be adjudicated in relation to a perpetrator who commits an offence within organised business activity: a ban on the exercise of a particular profession (Article 41 § 1 CC) or a ban on doing a particular business (Article 41 § 2 CC).

It is rightly emphasised in the amendment bill that conviction for an offence should result in ruling the forfeiture of items that served or were designed to commit an offence (Article 44 § 2 CC), i.e. inter alia all devices, instruments, including computers, diagnostic testers, interfaces, diagnostic cables, adapters and electronic modules and software that served unauthorised interference into the reading on an odometer.⁵⁶ The above-discussed doubts should be referred to items serving or designed to its unauthorised replacement. By analogy, it should be assumed that an odometer showing false mileage should be subject to forfeiture because it matches the criterion of an item originating from an offence.

A company that was entirely or only partially involved in the described offence can also be subject to forfeiture in the case the perpetrator has obtained, even indirectly, financial benefits of considerable value (Article 44a CC). The financial benefits gained or their equivalent can also be subject to forfeiture.

However, the forfeiture of a vehicle is not possible because it does not match any of the statutorily determined forfeiture criteria.

⁵⁵ D. Szeleszczuk, *supra* n. 3, pp. 94–95.

⁵⁶ Justification, *supra* n. 28, p. 5.

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LIABILITY FOR ILLEGAL TAMPERING WITH A MOTOR VEHICLE ODOMETER READING OR INTERFERENCE INTO ITS PROPER MILEAGE MEASUREMENT (ARTICLE 306A CC)

Summary

The article presents the characteristics of a new type of offence consisting in the alteration of the reading on an odometer of a motor vehicle or interference into its proper measurement of mileage (Article 306a CC). Following a traditional pattern, it describes the development of this institution, the object of protection, types of the offence and its subjective aspect. The article determines the subject and features of the subjective aspect. It also discusses possible concurrence of provisions and penalties involved. The introduction of criminal liability for conduct consisting in illegal tampering with the reading on an odometer is well-grounded, however, the normative approach to the institution is not perfect and does not cover all types of conduct aimed at concealment of actual mileage of a motor vehicle, which can hamper efficient combating the "clocking". It is in particular noticed that there is a lack of statutory grounds for penalising the replacement of an odometer in order to conceal the actual mileage, which violates the statutory provisions. The separate classification of "commissioning" the activities specified in Article 306a § 1 CC is criticised because it destructs the terminological coherence and the systematic organisation of the Criminal Code.

Keywords: substantive criminal law, altering the reading on an odometer, interference into proper measurement of an odometer, replacement of an odometer

ODPOWIEDZIALNOŚĆ ZA PRZESTĘPNĄ ZMIANĘ WSKAZANIA DROGOMIERZA POJAZDU MECHANICZNEGO LUB INGERENCJĘ W PRAWIDŁOWOŚĆ JEGO POMIARU (ART. 306A K.K.)

Streszczenie

W artykule dokonano charakterystyki nowego przestępstwa, polegającego na zmianie wskazania drogomicza pojazdu mechanicznego lub dokonaniu ingerencji w prawidłowość jego pomiaru (art. 306a k.k.). Według tradycyjnie przyjętego schematu opisano kształtowanie się tej instytucji, przedmiot ochrony przepisu, typy przestępstwa i jego stronę przedmiotową. Określono podmiot oraz znamiona strony podmiotowej. Omówiono także możliwy zbieg przepisów oraz zagrożenie karne. Wprowadzenie odpowiedzialności karnej za zachowania polegające na bezprawnej manipulacji stanem drogomicza jest uzasadnione, jednak ujęcie normatywne instytucji nie jest doskonałe i nie obejmuje wszystkich zachowań ukierunkowanych na ukrycie rzeczywistego przebiegu pojazdu mechanicznego, co może utrudnić

skuteczną walkę z procederem „cofania liczników”. Dostrzeżono w szczególności brak ustawowych podstaw do ukarania za dokonanie, wbrew przepisom ustawy, wymiany drogomierza w celu ukrycia rzeczywistego przebiegu pojazdu mechanicznego. Krytycznie oceniono także odrębne stypizowanie „zlecenia” czynności wymienionych w art. 306a § 1 k.k. jako zaburzające spójność terminologiczną i systematykę kodeksu karnego.

Słowa kluczowe: prawo karne materialne, zmiana wskazania drogomierza, ingerencja w prawidłowość pomiaru drogomierza, wymiana drogomierza

RESPONSABILIDAD POR LA MODIFICACIÓN DELICTIVA DE KILOMETRAJE DE UN VEHÍCULO MECÁNICO O INTERFERENCIA EN MEDICIÓN CORRECTA DE CUENTAKILÓMETROS (ART. 306A DEL CÓDIGO PENAL)

Resumen

El artículo describe el nuevo delito que consiste en trucar cuentakilómetros de un vehículo mecánico o en intervenir en su medición correcta (art. 306a del código penal). Según el esquema tradicional, se analizan los antecedentes de esta institución, bien jurídico protegido por el precepto, tipos de delitos, y su parte objetiva. Se determina el sujeto activo y elementos de la parte subjetiva, así como los posibles concursos de normas y la sanción. La introducción de la responsabilidad penal por la conducta que consiste en manipulación antijurídica de cuentakilómetros es fundada, sin embargo la regulación normativa de la institución no es ideal y no incluye todas posibles conductas que tiendan a ocultar el kilometraje real de un vehículo mecánico, lo que puede dificultar la lucha contra la falsificación de cuentakilómetros. En particular, faltan las bases legales para sancionar el cambio ilegal de cuentakilómetros con el fin de ocultar el kilometraje real de un vehículo mecánico. Se valora críticamente la tipificación por separado del hecho de encargar la ejecución de acciones enumeradas en el art. 306a § 1 del código penal, dado que trastorna la cohesión terminológica y sistemática del código penal.

Palabras claves: derecho penal, modificación de cuentakilómetros, interferencia en la medición correcta de cuentakilómetros, cambio de cuentakilómetros

ОТВЕТСТВЕННОСТЬ ЗА ПРЕСТУПНОЕ ИЗМЕНЕНИЕ ПОКАЗАНИЙ СЧЕТЧИКА ПРОБЕГА АВТОТРАНСПОРТНОГО СРЕДСТВА ИЛИ НАРУШЕНИЕ ПРАВИЛЬНОСТИ ЕГО ИЗМЕРЕНИЙ (СТ. 306А УК)

Резюме

В статье описывается новый состав преступления, состоящий в изменении показаний счетчика пробега транспортного средства (одометра) или нарушении правильности его измерения (ст. 306а УК). В соответствии с принятой схемой, описывается формирование данного института, предмет правовой охраны, виды данного преступления, а также его объективная сторона. Уточнены субъект и характеристики субъективной стороны преступления. Обсуждается также возможность совпадения норм права, а также уголовные санкции за преступление. Введение уголовной ответственности за действия, заключающиеся в незаконном воздействии на состояние счетчика пробега, представляется обоснованным. Однако, то, как институт ответственности

за это преступление отражен в нормах права, оставляет желать лучшего. Существующее законодательство не охватывает всех видов действий, направленных на сокрытие фактического пробега транспортного средства, что может препятствовать эффективной борьбе с преступной практикой «скручивания пробега». В частности, автор отмечает, что не существует законных оснований для применения санкций за замену (в нарушение положений закона) счетчика пробега с целью сокрытия фактического пробега транспортного средства. Автор также критикует отдельную классификацию «заказа» на выполнение действий, предусмотренных в ст. 306а § 1 УК, на том основании, что она нарушает терминологическую последовательность и систематику уголовного кодекса.

Ключевые слова: материальное уголовное право, изменение показаний счетчика пробега, нарушение правильной работы счетчика пробега, замена счетчика пробега

DIE HAFTUNG FÜR DIE GESETZSWIDRIGE MANIPULATION
VON KILOMETERZÄHLERN, D.H. DIE ÄNDERUNG
DER TATSÄCHLICHEN KILOMETERLEISTUNG VON KRAFTFAHRZEUGEN
UND DEN EINGRIFF IN DIE KORREKTE,
VORSCHRIFTSMÄSSIGE MESSUNG DER KILOMETERLEISTUNG
(ARTIKEL 306A DES POLNISCHEN STRAFGESETZBUCHES)

Zusammenfassung

In dem Artikel werden die Merkmale einer neuen Straftat gekennzeichnet, die darin besteht, dass der Kilometerzähler eines Kraftfahrzeugs manipuliert und die tatsächliche Kilometerleistung geändert wird oder in die korrekte, vorschriftsmäßige Messung der Kilometerleistung Eingriff genommen wird (Artikel 306a des polnischen Strafgesetzbuches). Nach dem herkömmlichen Schema werden die Gestaltung dieses Rechtsinstituts (Instruments), der Schutzgegenstand im Sinne der Vorschrift, die Kategorien der Straftat und ihre objektiven Tatbestände beschrieben. Bezeichnet werden außerdem der Gegenstand und die Merkmale des objektiven Tatbestands. Ebenfalls erörtert werden das mögliche Zusammentreffen verschiedener Rechtsvorschriften und die drohenden strafrechtlichen Sanktionen. Die Einführung der strafrechtlichen Verantwortlichkeit für rechtswidriges Verhalten in Form der widerrechtlichen Manipulation eines Kilometerzählers ist gerechtfertigt. Der normative Rahmen des Rechtsinstituts ist dabei jedoch alles andere als perfekt und deckt nicht das gesamte Verhaltensspektrum ab, das darauf abzielt, die tatsächliche Laufleistung eines Kraftfahrzeugs zu verschleiern, wodurch eine wirksame Bekämpfung des „Tacho-Zurückstellens“ erschwert wird. Insbesondere wird auf das Fehlen gesetzlicher Strafgründe für den gesetzeswidrigen Austausch eines Kilometerzählers zur Verschleierung der tatsächlichen Kilometerlaufleistung eines Kraftfahrzeugs hingewiesen. Kritisch bewertet wird auch die separate Kategorisierung der „Beauftragung“ mit den in Artikel 306a § 1 des polnischen Strafgesetzbuches aufgeführten Handlungen, die als Verstoß gegen die terminologische Kohärenz und die Systematik des Strafgesetzbuches betrachtet wird.

Schlüsselwörter: materielles Strafrecht, Manipulation des Kilometerzählers, Änderung der tatsächlichen Kilometerleistung, Eingriff in die korrekte, vorschriftsmäßige Messung der Kilometerleistung, Austausch des Kilometerzählers

RESPONSABILITÉ DE LA MODIFICATION CRIMINELLE DE LA LECTURE DE L'ODOMÈTRE D'UN VÉHICULE AUTOMOBILE OU DE L'INGÉRENCE DANS L'EXACTITUDE DE SON MESURE (ART. 306A DU CODE PÉNAL)

Résumé

L'article caractérise un nouveau infraction consistant à modifier la lecture de l'odomètre d'un véhicule automobile ou à interférer avec l'exactitude de sa mesure (article 306a du code pénal). Selon le schéma traditionnellement adopté, la formation de cette institution, le sujet de la protection de la disposition, les types de crime et son sujet ont été décrits. Le sujet et les éléments constitutifs subjectifs ont été précisés. Un concours éventuel de dispositions légales et une menace pénale ont également été discutés. L'introduction de la responsabilité pénale pour le comportement impliquant la manipulation illégale du compteur kilométrique est justifiée, cependant, l'approche normative de l'institution n'est pas parfaite et ne couvre pas tous les comportements visant à masquer le kilométrage réel d'un véhicule automobile, ce qui peut entraver la lutte efficace contre le «renversement de compteur». En particulier, l'absence de motif légal de punition pour avoir effectué, contrairement aux dispositions de la loi, le remplacement d'un compteur kilométrique afin de masquer le kilométrage réel d'un véhicule automobile a été constatée. La stipulation séparée de «l'ordre» des activités énumérées à l'art. 306a § 1 du code pénal, comme perturbant la cohérence terminologique et la systématique du code pénal, a également fait l'objet d'une évaluation critique.

Mots-clés: droit pénal matériel, modification de la lecture de l'odomètre, ingérence dans l'exactitude de la mesure de l'odomètre, remplacement de l'odomètre

RESPONSABILITÀ PER IL REATO DI MODIFICA DELL'INDICAZIONE DEL CONTACHILOMETRI DI UN AUTOVEICOLO O INGERENZA NELLA CORRETTEZZA DELLA SUA MISURA (ART. 306A DEL CODICE PENALE)

Sintesi

Nell'articolo si è analizzato il nuovo reato consistente nella modifica dell'indicazione del contachilometri di un autoveicolo o nell'ingerenza nella correttezza della sua misura (art. 306a del Codice penale). Secondo lo schema tradizionalmente assunto si è descritta la formazione di tale istituzione, l'oggetto di tutela della norma, il tipo di reato e la sua sostanza. È stato definito il soggetto e gli elementi soggettivi. È stato anche descritto un possibile concorso di norme e un rischio penale. L'introduzione della responsabilità penale per comportamenti consistenti nella manipolazione illecita dello stato del contachilometri è motivata, tuttavia l'aspetto normativo dell'istituzione non è perfetto e non comprende tutti i comportamenti mirati a nascondere l'effettivo chilometraggio dell'autoveicolo, il che può ostacolare una lotta efficace alla pratica della manomissione del contachilometri. È stata notata in particolare l'assenza di basi giuridiche per punire la sostituzione del contachilometri, in contrasto alle norme della legge, al fine di nascondere l'effettivo chilometraggio dell'autoveicolo. È stata valutata criticamente anche la classificazione distinta di "affidamento" delle azioni indicate nel art. 306a § 1 del Codice penale, in quanto turbativa della coerenza terminologica e della sistematicità del codice penale.

Parole chiave: diritto penale sostanziale, modifica dell'indicazione del contachilometri, ingerenza nella correttezza della misura del contachilometri, sostituzione del contachilometri

Cytuj jako:

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